IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11680 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LUMBHA SEVA SAHAKARI MANDLI LIMITED

Versus

PRANT OFFICER

Appearance:

1. Special Civil Application No. 11680 of 2004

MR YN RAVANI for Petitioner No. 1

MR PR ABICHANDANI, AGP for Respondent No. 1-2

SERVED BY AFFIX.(N) for Respondent No. 3

RULE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 14/02/2005

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 31.01.2004 / 29.05.2004 passed by the Secretary (Appeals) Revenue Department, State of Gujarat in revision application no. 105 of 1986 in dismissing the same and confirming the order passed by the Prant Officer, Viramgam dated 28.04.1986.

#. Mr.Y.N.Ravani, learned advocate for the petitioner has submitted that the petitioner has purchased the land in question by registered sale deeds dated 12.11.1981, 24.10.1981 and 24.11.1981 and necessary revenue entries in the revenue records were also mutated being revenue entry nos. 2555, 2556 and 2557. Ultimately, after a period of almost four years suo motu powers came to be exercised by the Prant Officer, Viramgam Prant taking the aforesaid transactions in suo motu review for the breach of Section 9 of the Prevention of Fragmentation (Consolidation of Holdings) Act, 1947 (the `Fragmentation Act' for short) and the order came to be passed on 28.04.1986 declaring the aforesaid transactions invalid and contrary to the provisions of the Fragmentation Act. It is submitted that against the order passed by the Prant Officer dated 28.04.1986 revision application came to be filed before the Secretary (Appeals) being revision application no. SRD/105/86 which came to be dismissed on 04.01.1988 without considering the arguments advanced on behalf of the petitioner with regard to suo motu exercise of the powers after unreasonable period and not considering the judgments which were cited before the authority with regard to exercise of suo motu powers after unreasonable period. Being aggrieved and dissatisfied with the same, the petitioner preferred Special Civil Application no. 741 of 1989 before this Court and the same came to be finally heard by the learned single Judge (Coram : S.K.Keshote, J) (as he then was) and considering the fact that the contention with regard to initiation of suo motu proceedings for cancellation of the sale deeds after period of limitation and / or after unreasonable period was not considered by the revisional authority and therefore while allowing the aforesaid Special Civil Application, the learned single Judge made the following observations :

> "From the judgment of the appellate authority, I find that the contention re. the limitation of initiation of suo motu proceedings for the cancellation of the sale deed of the disputed land as well as revenue entries has been raised by the appellant - petitioner. Not only this but

a decision of Supreme court has also been cited. The appellate authority in the judgment even has not referred this contention of the learned counsel for the petitioner raised therein what to say to decide the same. The learned counsel for the respondents is not able to point out anything from the judgment of the appellate authority that this contention raised by the learned counsel for the petitioner has been considered and decided. Where a contention is raised by the appellant before the appellate authority irrespective of the fact what the appellate authority will decide on merits thereof the same has to be considered and decided. If that has not been done certainly it is an error apparent on the face of the order and only on this ground the orders passed by the appellate authority cannot be allowed to stand.

As a result of the aforesaid discussion this petition is allowed and the order of the appellate authority at Annexure -B dated 4.1.88 is quashed and set aside and the appellate authority is directed to restore the appeal to its original number and after giving notice and opportunity of hearing to all the parties to the appeal decide the appeal afresh in accordance with law.

Rule is made absolute accordingly. The respondent - State is directed to pay Rs.1,000/- towards costs of the petition to the petitioner."

#. Mr.Ravani has submitted that inspite of the fact that this Court remanded the matter to the Secretary (Appeals) to consider the aforesaid revision application afresh as the question with regard to initiation of the suo motu proceedings after unreasonable period was not considered by the revisional authority and under the circumstances, the revisional authority was bound to consider the same, yet the Secretary (Appeals) has not decided the same and has dismissed the revision application without considering, dealing and discussing the same and therefore, requested to allow the present petition.

#. Mr.P.R.Abichandani, learned A.G.P. is not in a position to support the judgment and order passed by the Secretary (Appeals) dated 29.05.2004 rendered in revision application no. 105 of 1986.

#. This Court earlier by its judgment and order dated

26.07.2000 in Special Civil Application no. 741 of 1989 quashed and set aside the order passed by the revisional authority dated 04.01.1988 on the ground that the revisional authority has not considered the question with regard to limitation and initiation of suo motu proceedings after unreasonable period though it was urged and even the decisions of the Supreme Court were cited and that this Court allowed the aforesaid petition with costs of Rs.1,000/-. Inspite of the aforesaid clear-cut direction issued by this Court, Secretary (Appeals) has not only not considered the same but in fact he has not dealt with the same and the revision application came to be dismissed in a mechanical manner without considering the fact that as to for what purpose the matter was remanded to him. In the impugned judgment and order dated 29.05.2004 the revisional authority has not only not considered the same but has not dealt with the submission on behalf of the petitioner with regard to exercise of the powers by the authority after unreasonable period and that he has not even considered the judgments of the Supreme Court which were cited before him. The Secretary (Appeals) was bound to consider the direction issued by this court in the aforesaid decision and he was required to know as to for what purpose the matter is remanded. In no uncertain terms it is observed by this court that earlier Secretary (Appeals) has not considered the submissions on behalf of the petitioner with regard to exercise of the powers after unreasonable period though the same was canvassed and even though the judgments were cited and for that purpose the order was set aside and the matter was remanded again. Without considering the same, the Secretary (Appeals) has dismissed the revision application. In fact, this is nothing but gross abuse of powers and non- application of mind.

#. Under the circumstances, the present petition is required to be allowed and while quashing and setting aside the judgment and order dated 29.05.2004 passed in revision application no. 105 of 1986, the Secretary (Appeals) is directed to consider and deal with the contentions of the petitioner with regard to exercise of the powers by the authority under the provisions of the Fragmentation Act after unreasonable period and give specific findings after dealing with the same.

#. For the reasons stated above, this petition is allowed. The impugned order dated 29.05.2004 passed in revision application no. 105 of 1986 by the Secretary (Appeals) is quashed and set aside. The matter is remanded to the Secretary (Appeals) to decide it afresh

considering the observations made hereinabove and the appropriate decision shall be taken considering the submissions on behalf of the petitioner with regard to exercise of the powers by the authority after unreasonable period. Considering the facts and circumstances of the case, State Government is directed to pay cost of Rs.7500/- to the petitioner which can be recovered by the State Government from the erring officer. The State Government is directed to pay the aforesaid cost of Rs.7500/- to the petitioner within a period of two months from today. In view of the fact that the proceedings are very old, the revisional authority is directed to decide and dispose of the aforesaid revision application within a period of three months from the date of the receipt of the writ of this order. Until then, parties are directed to maintain status quo.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent.

(M.R.Shah,J)

(pathan)